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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

BAYER SCHERING PHARMA AG &
BAYER HEALTHCARE
PHARMACEUTICALS INC.

Plaintiffs

v.

SUN PHARMACEUTICAL INDUSTRIES
LIMITED, SUN PHARMA GLOBAL FZE,
SUN PHARMA GLOBAL and SUN
PHARMACEUTICAL INDUSTRIES, INC.

Defendants.

Case No. 2:11-cv-00054-KJD-PAL

Stipulated Final Judgment

1 **WHEREAS**, Plaintiffs Bayer Schering Pharma AG and Bayer HealthCare
 2 Pharmaceuticals Inc. (collectively “Bayer”) brought the following action against Defendants Sun
 3 Pharmaceutical Industries Limited, Sun Pharma Global FZE, Sun Pharma Global and Sun
 4 Pharmaceutical Industries, Inc. (“Sun”) in the United States District Court for the District of
 5 Nevada (“District Court”), alleging infringement of U.S. Reissue Patent Nos. 37,564; 37,838 and
 6 38,253 (collectively, the “Patents-In-Suit”), based on Sun Pharma Global FZE’s submission of
 7 Abbreviated New Drug Application No. 202318 (“Sun’s YAZ® ANDA”), which seeks approval to
 8 market a generic version of Bayer’s YAZ® product (“Sun’s YAZ® ANDA Product”): *Bayer*
 9 *Schering Pharma AG and Bayer Healthcare Pharmaceuticals Inc. v. Sun Pharmaceutical*
 10 *Industries Limited, Sun Pharma Global FZE, Sun Pharma Global and Sun Pharmaceutical*
 11 *Industries, Inc.*, Civil Action No. 2:11-cv-00054-KJD-PAL (D. Nev.), filed January 12, 2011 (“the
 12 Sun Action”);

13 **WHEREAS**, Bayer has commenced similar cases against other defendants, which also
 14 relate to the alleged infringement of the Patents-In-Suit, including: *Bayer Schering Pharma AG et*
 15 *al. v. Watson Pharmaceuticals, Inc. et al.*, Civil Action No. 2:07-cv-01472-KJD-GWF (D. Nev.)
 16 and *Bayer Schering Pharma AG et al. v. Sandoz, Inc.*, Civil Action No. 2:08-cv-00995-KJD-GWF
 17 (D. Nev.) (“the Watson/Sandoz Actions”);

18 **WHEREAS**, on August 26, 2011, the parties to the Sun Action filed a Stipulation of
 19 Dismissal and Stay (Dkt. 40), which provided a procedure to streamline disputed issues and to
 20 conserve the resources of the parties and the District Court including, *inter alia*, a stipulated stay
 21 of the Sun Action pending resolution of the Watson/Sandoz Actions (“the Stipulation”);

22 **WHEREAS**, concurrent with filing of the Stipulation, Bayer filed a Statement of
 23 Nonliability and Covenant Not to Sue Sun with respect to, *inter alia*, U.S. Reissue Patent Nos.
 24 37,838 and 38,253 (“the Covenant”), wherein Bayer agreed that “Sun and any Sun customer
 25 (direct or indirect), manufacturing partner, supply partner, marketing partner, licensee or purchaser
 26 of Sun’s YAZ® ANDA Product or the portion of Sun’s business to which Sun’s ANDA No. 20-

1 2318 relates has no liability to Bayer for infringement of [U.S. Reissue Patent Nos. 37,838 and
2 38,253] (Dkt. 39);

3 **WHEREAS**, pursuant to the Stipulation Bayer and Sun agreed to be bound by the final
4 judgment in Bayer's litigation against two other generic drug manufacturers: Watson and Sandoz.
5 (Doc. 40, Stipulation of Dismissal and Stay.) Bayer and Sun also agreed that the judgment in the
6 Watson/Sandoz Action regarding the patents-in-suit shall be entered in this action. (*Id.*);

7 **WHEREAS**, on April 16, 2013, the United States Court of Appeals for the Federal Circuit
8 (the "Federal Circuit") reversed the district court's March 30, 2012 decision finding Bayer's
9 asserted patent valid and enforceable in the Watson/Sandoz Action. (Dkt. 63, 4/16/2013 Opinion
10 and Judgment, *Bayer HealthCare Pharma v. Watson Pharma.*, 12-1397 (Fed. Cir.)). The Federal
11 Circuit also concluded that the asserted claims of the patent-in-suit are invalid for obviousness and
12 rendered judgment in favor of Watson and Sandoz. (*Id.*) On August 12, 2013, the Federal Circuit
13 denied Bayer's Motion for Panel Rehearing And Rehearing En Banc. (Dkt. 71, 8/12/2013 Order,
14 *Bayer HealthCare Pharma v. Watson Pharma.*, 12-1397 (Fed. Cir.));

15 **WHEREAS**, Bayer will not seek further appellate review of the Federal Circuit's
16 judgment for Watson and Sandoz in the Watson/Sandoz Action;

17 **IT IS HEREBY ORDERED AND ADJUDGED**, subject to the approval of the Court,
18 that:

19 1. The asserted claims of U.S. Reissued Patent No. RE 37,564 are invalid pursuant to
20 35 U.S.C. § 103;

21 2. Final and non-appealable Judgment is entered in favor of Sun and against Bayer
22 with respect to all claims and counterclaims concerning the asserted claims of U.S. Reissued
23 Patent No. RE 37,564;

24 3. All claims, counterclaims and defenses with respect to U.S. Reissue Patent Nos.
25 37,838 and 38,253 are dismissed with prejudice;

1 4. All of Sun's remaining counterclaims against Bayer are dismissed with prejudice as
2 moot in light of the Statement of Non-Liability and Covenant Not To Sue.

3 5. The parties shall each bear their own costs.

4 6. This action is hereby terminated and closed.

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1 **SO STIPULATED:**

2 Dated: November 1, 2013

3 BAYER SCHERING PHARMA AG and
4 BAYER HEALTHCARE
5 PHARMACEUTICALS INC.

6 By: /s/ Matthew R. Ford

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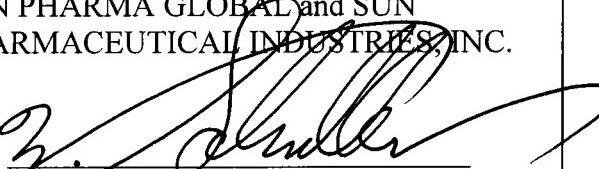
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35 *Bayer Schering Pharma AG and*
36 *Bayer HealthCare Pharmaceuticals Inc.*

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Attorneys for Defendants

1 IT IS SO ORDERED:
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UNITED STATES DISTRICT JUDGE

DATED: 11/5/13

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6 KENT J. DAWSON
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10 Bayer Schering Pharma AG et al. v. Sun Pharmaceutical Indus. Ltd. et al.

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12 Stipulated Final Judgment

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